IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 627 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BINALBEN KAMESHBHAI PATEL - Petitioner(s)

Versus

GUAJRAT ROADWAYS PROP.USMAN ABDULRAHEMAN & 1 - Respondent(s)

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Appearance :

MR NIRAV C THAKKAR for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/01/2006

ORAL JUDGMENT

1.By way of this petition under Articles 226 and 227 of the Constitution, the petitioner-one of the original claimant has prayed for an appropriate writ, direction or order modifying the order dated 18.7.2005 passed

below Exh.21 in M.A.C.Petition No.377 of 2004 passed by the M.A.C.Tribunal (Main), Kheda at Nadiad thereby directing that 30% of the amount of compensation found payable to the petitioner be permitted to be withdrawn by the petitioner and the rest be ordered to be deposited in a fixed deposit for a period of 5 years. The petitioner has also further prayed for an order to direct that the petitioner be allowed to apply for withdrawal of the amount so deposited as and when necessary by making appropriate application before the M.A.C.Tribunal (Main), Kheda at Nadiad.

2. It appears from the record that the petitioner along with other two persons i.e. her in-laws had preferred the M.A.C.Petition No.377 of 2004 before the learned M.A.C.Tribunal (Main), Kheda at Nadiad for the compensation for the death of her husband. That in the said claim petition, the petitioner and other claimants submitted an application Exh.21 for getting the compensation under Section 163-A of the M.V.Act; 1988 and the learned M.A.C.Tribunal (Main), Kheda at Nadiad by its judgment and order dated 18.7.2005 partly allowed the same and directed the opponents to pay Rs.4,17,500/- with interest at the rate of 7.5% per

annum. By the said judgment and order, the tribunal further issued direction that the petitioner be paid 2/3rd amount and the parents be paid 1/3rd amount of compensation. The tribunal also issued direction that so far as the share of the petitioner is concerned, i.e. 2/3rd amount of the entire compensation, the entire amount be deposited and invested in fixed deposit in the name of the petitioner in any Nationalized Bank or Post Office of her choice for a period of 5 years and that the petitioner will be entitled to the periodical interest accrued on the said fixed deposit. The tribunal also further issued direction that so far as the parents are concerned, they be paid 30% amount by Account Payee Cheque and the remaining 70% amount was directed to be invested in a fixed deposit for a period of 5 years. The tribunal also issued direction that the claimants will not be entitled to get any loan, advance or withdrawal or can create any encumbrance on the aforesaid fixed deposit receipts without prior permission of the tribunal. Being aggrieved and dissatisfied with the aforesaid direction qua directing to deposit the entire amount, which was due and payable to the petitioner, in a fixed deposit, the petitioner has preferred the present Special Civil Application

under Articles 226 and 227 of the Constitution of India for the aforesaid reliefs.

3. Shri Thakker, learned advocate appearing on behalf of the petitioner has submitted that when the tribunal passed an order to pay 30% of the amount due and payable to the parents-original claimant Nos.1 and 2 by Account Payee Cheque and the remaining 70% amount was directed to be deposited/invested in fixed deposit, the tribunal ought to have given similar treatment in favour of the petitioner and ought to have paid the 30% of the amount of compensation payable to the petitioner and balance 70% amount was required to be invested in a fixed deposit.

4. It is required to be noted that the compensation is paid to the petitioner for her maintenance as her husband died in a vehicular accident and therefore, the future interest of the petitioner is also required to be protected. Considering the fact that the petitioner is a widow aged about 23 years only and even the petitioner is residing with her in-laws who was permitted to withdraw 30% of the amount of compensation payable to them by Account Payee Cheque and the entire

amount of compensation payable to the petitioner is directed to be deposited in the fixed deposit for a period of 5 years and the periodical interest accrued thereon is directed to be paid to the petitioner, it cannot be said that such a direction is illegal and/or against the interest of the petitioner-claimant. On the contrary, the tribunal is justified in directing to invest the compensation payable to the petitioner in a fixed deposit for a period of 5 years. So far as another prayer to direct that the petitioner be allowed to apply for withdrawal of the amount so deposited as and when necessary by making appropriate application before the tribunal is concerned, in fact, the tribunal itself in its operative order has specifically mentioned that the petitioner will not be entitled to get any loan, advance or withdrawal or can create any encumbrance on the aforesaid fixed deposit receipts without prior permission of the tribunal meaning thereby, the petitioner can move an appropriate application before the tribunal as and when necessity arises for making such an application and the same came to be dealt with by the tribunal in accordance with law and on its own merits.

5.Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH, J.)

kdc.